

LEGISLATIVE UPDATES / SERVICE CONTRACTS

September 2022

The information provided in this legislative update summarizes legislation recently passed, introduced and currently pending. Each bill has been summarized to highlight the pertinent parts that may have an effect on certain F&I products.

This legislative update is created for internal purposes, based on information provided by service contract industry trade association publications and industry discussions conducted by such trade associations. As a courtesy, this legislative update is made available to certain clients to share with their regulatory advisors. Clients should use this information only as a guide for topics to be discussed in more detail with their legal and regulatory advisors.

ARIZONA

Draft Rule: R21-93

Subject: Implementation of new Rules for the Service Company Act
Date Filed: 08/17/2021
Effective Date: PENDING

Summary:

The draft rules are intended to capture the current statutory requirements enacted in the Service Company Act last year under SB1049 and HB2443. The SCIC has met with the Arizona Department of Insurance ("AZ DOI") on numerous occasions this year and over the past year to address member concerns regarding the scope of the proposed Rule exceeding the statutory changes that were implemented in 2021.

Based on the Second Supplemental Rule received on 9/12/2022, we do not anticipate these rules will require the need to revise and refile our service contract forms.

CALIFORNIA

Bill No.: AB 2912

Subject: Consumer Warranties
Date Filed: 2/18/2022
Effective Date: PASSED – EFFECTIVE 01/01/2023

Summary:

This bill was likely introduced as a result of delays in delivery of goods. The bill would amend the Song-Beverly Consumer Warranty Act to prohibit the commencement of an express warranty earlier than the date of delivery of the good by adding SEC 2. Section 1793.01 to the Civil Code: *"1793.01. A manufacturer, distributor, or retail seller shall not make an express warranty with respect to a consumer good that commences earlier than the date of delivery of the good. This section does not limit an express warranty made before July 1, 2023."*

This bill would impact the effective date of service contracts where coverage begins when the express warranty ends. The new law does not apply to an express warranty made before 7/1/2023. If a vehicle is sold 7/1/2023 or later and the vehicle is not delivered at the time of sale, the manufacturer's warranty will not start until the delivery date.

MASSACHUSETTS

Bill No.: HB 1065

Subject: Third Party obligor Vehicle Service Contracts
Date Filed: 2/19/2021
Effective Date: PENDING

Summary:

Would authorize 3rd party motor vehicle service contracts under the existing service contract law. The bill includes "ancillary" (i.e., T&W, PDR, Key, Windshield r/r) within the definition of a service contract. Massachusetts long standing position is that a VSC must be offered under a D/O structure.

NEW JERSEY

Bill No.: SB 902

Subject: Service Contract Amendments
Date Filed: 1/27/2022
Effective Date: PASSED – EFFECTIVE 09/01/2023

Summary:

This bill amends Section 1 of P.L.2013, c.197 (C.56:12-87 et al.) The impact of the bill as passed is summarized below:

- Definition added for Division: means the Division of Consumer Affairs in the Department of Law and Public Safety. (the regulatory authority for registration)
- Definition added for Regulated Entity: means a provider or an administrator.
- Both the provider and administrator must register/obtain a license
- If the term “Warranty” or “Extended Warranty” is used in the contract or regulated entity name, the following disclosure is required: “*The product being offered is a service contract and is separate and distinct from any product or service warranty which may be provided by the manufacturer, importer, or seller.*”
- An Administrator must comply with the Financial Requirements (i.e., CLIP)

NEW YORK

Bill No.: SB 9099 (Companion Bill AB 10629)

Subject: PDR – Rate filing
Date Filed: 05/09/2022
Effective Date: PENDING (If passed would be effective immediately upon passage)

Summary:

Current law requires provider fees (retail rates) for Paintless Dent Repair (“PDR”) service contracts be filed with the State. This bill would exempt PDR service contract from this requirement.

NEW YORK

Bill No.: SB 9101 (Companion Bill AB 10529)

Subject: Multiple CLIPS
Date Filed: 05/09/2022
Effective Date: PENDING (If passed would be effective immediately upon passage)

Summary:

Current law requires a service contract Provider must insure ALL its obligations under 1 CLIP, thus prohibiting a Provider from using multiple insurers to insure their obligations. This bill would remove this restriction and allow a Provider to utilize multiple CLIPs to insure their service contract obligations.

NEW YORK

Bill No.: SB 3580

Subject: Anti-Theft Product Warranties
Date Filed: 01/30/2021
Effective Date: PENDING (effective date unclear)

Summary:

This bill adds a new section (Article 79-A) to create framework and regulation of theft protection products. UPDATE: The bill was re-referred to Insurance January 5, 2022.

NEW YORK

Bill No.: AB 7210

Subject: Service Contract - Law Amendment
Date Filed: 4/29/2021
Effective Date: PENDING (effective date unclear)

Summary:

The bill amends the current excess wear and use portion of the service contract definition to add express authorization for such products to cover tires, paint cracks or chips, exterior dents or scratches, windshield cracks or chips, and exterior parts. The bill was re-referred to Insurance January 5, 2022.

Federal Trade Commission (“FTC”)

Reported by the SCIC to members on 6/24/2022.

In an effort to put a stop to “hidden add-on charges” and “bait-and-switch advertising”, the Federal Trade Commission (“FTC”) published proposed rules in the Federal Register on July 13, 2022 related to the sale, financing, and leasing of motor vehicles by motor vehicle dealers. The proposed rules material directly references add-on products including service contracts and GAP agreements. There is a 60-day period in which they are accepting comments to the proposed rule. Comments were due 9/12/2022.

The FTC stated in a press release: “The proposal would prohibit dealers from charging consumers for an add-on without their clear, written consent and would require dealers to inform consumers about the price of the car without any of optional add-ons.”

The proposed Rule would

- (i) prohibit motor vehicle dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles,
- (ii) require accurate pricing disclosures in dealers’ advertising and sales discussions,
- (iii) require dealers to obtain consumers’ express, informed consent for charges,
- (iv) prohibit the sale of any add-on product or service that confers no benefit to the consumer, and
- (v) require dealers to keep records of advertisements and customer transactions.

Comment letters were submitted by multiple associations: GAPA, SCIC, MVPPA, NADA, APCIA, CCIA, AFSA, and CBA.

The Consumer Financial Protection Bureau (“CFPB”)

The Consumer Financial Protection Bureau (CFPB) announced that it is invoking a largely unused legal provision to examine nonbank financial companies that pose risks to consumers. The CFPB was granted authority over certain nonbank entities through the Dodd-Frank Wall Street Reform and Consumer Protection Act, and in 2013, the CFPB issued a final rule to establish procedures to implement that authority. Until now, the authority has been largely unused.

The CFPB believes that utilizing this dormant authority will help protect consumers. The law gives the CFPB authority to conduct supervisory examinations to review the books and records of regulated entities.

The Consumer Financial Protection Bureau (“CFPB”)

On May 19, 2022, the CFPB issued an interpretive rule describing states’ expanded authority to pursue and enforce violations of federal consumer protection laws under the Consumer Financial Protection Act (“CFPA”). The CFPB further promoted that a state may bring an enforcement action that is not addressed by a CFPB enforcement action against the same entity.

On July 28, 2022, Representative Patrick McHenry, of the House Financial Services Committee sent a letter to CFPB Director, Rohit Chopra, asserting in material part ,that *“It is clear that state attorneys general may enforce the CFPA in cases where the CFPB has not. But the statute does not allow for a state attorney general to become a party to an existing CFPB enforcement action. It is therefore inappropriate for the CFPB to recruit a state attorney general that is not otherwise investigating a company, to pursue enforcement as a means of intimidation.”* Additionally, the letter requests all documents related to communication between the CFPV and states attorneys general since October 12, 2021.